

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

KATHRYN BAUMAN RUBENSTEIN,)	
)	
PLAINTIFF,)	
)	
VS.)	CIVIL CASE NO.: 1:07cv798-MHT
)	
BETTY JO BAUMAN, et al.,)	
)	
DEFENDANTS.)	

**MOTION TO DISMISS OR, IN THE ALTERNATIVE,
FOR JUDGMENT ON THE PLEADINGS**

Come now Defendants, JOEL W. WEATHERFORD; FARMER, PRICE, HORNSBY & WEATHERFORD, LLP; J. MICHAEL CONAWAY; JERE C. SEGREST; LEXA E. DOWLING; WILLIAM L. LEE, III, and LEE & McINISH, P.C., by and through their attorney of record and, pursuant to Rule 12 (b)(6) and Rule 12(c) of the Federal Rules of Civil Procedure (FRCP), move this Honorable Court to dismiss Plaintiff's Complaint, First Amended Complaint and Second Amended Complaint for failure to state any claim against said Defendants upon which relief can be granted. In support of this Motion, Defendants show unto the Court the following:

1) Plaintiff has failed to comply with the Order of U.S. Magistrate Judge Wallace Capel, Jr., dated September 13, 2007, by timely filing of her Second Amended Complaint in accordance with the Court's Order. Additionally, Plaintiff has failed to plead with specificity, in any of her Complaints, facts or claims against any of these Defendants as directed by the Court's Order.

2) Plaintiff purports to assert against these Defendants a federal Section 1983 case based on their supposed conspiracy "to defraud and deny Plaintiff her Civil Rights including due process in Houston County Circuit Court Case CV-02-5063 and the subsequent appeal before the Alabama Court

of Civil Appeals and the Alabama Supreme Court.” Plaintiff’s Complaint, as amended, fails to allege any facts or claims against any of these Defendants which would support any claim for relief.

3) Attorneys Joel W. Weatherford of Farmer, Price, Hornsby & Weatherford, J. Michael Conaway, Jere C. Segrest, Lexa E. Dowling and William L. Lee, III, of Lee & McInish are private practicing attorneys in Dothan, Alabama. Attorneys Weatherford and Lee have represented during the pendency of CV-02-5063 various persons and entities who were sued by the Plaintiff, including Regions Bank, Brian Bickhaus, Pat Black, Robert Birmingham, Boyd Horn, Bryan Jordan, Marilyn Bauman Granger, Bennie Wayne Granger, Granger Unlimited, Inc., Barbara Bauman Kamensky, and Allen E. Kamensky. Attorney Lexa E. Dowling is Guardian and Conservator of Betty Jo Bauman and she has been represented in that capacity in CV-02-5063 by attorney J. Michael Conaway. Attorney Jere C. Segrest has been Guardian Ad Litem during the pendency of CV-02-5063 for Betty Jo Bauman.

4) Even though Farmer, Price, Hornsby & Weatherford, LLP; J. Michael Conaway; Jere C. Segrest; Lexa E. Dowling; and Lee & McInish, P.C., are named as party Defendants in the Plaintiff’s Complaint, as amended, Plaintiff fails to make any further statements or allegations in her Complaint, as amended, setting forth any facts, claims, acts, omissions or legal theories of liability against these said Defendants.

5) Plaintiff has made a general statement in paragraph (67) of her Second Amended Complaint claiming that Defendant Joel W. Weatherford and Regions Bank engaged Judge Larry Anderson and Sandra K. Anderson (wife of Judge Anderson) “in compensatory bias” in Houston County, Alabama, on divers dates in 2001, 2002, and 2003. This claim fails to state a viable cause of action against Defendant Weatherford upon which relief can be granted and does not set forth any wrongful act committed by Defendant Weatherford with specificity in accordance with Judge Capel’s Order of September 13, 2007.

6) Plaintiff has made general statements in paragraphs (71) and (72) of her Second Amended Complaint claiming that Judge Anderson continued a hearing on April 15, 2005, at the request of Defendant Lee and that Defendant Lee “conspired” with Judge Anderson on July 8, 2003, to deny Plaintiff all discovery in the state court case. This claim fails to state a viable cause of action against Defendant Lee upon which relief can be granted and does not set forth any wrongful act committed by Defendant Lee with specificity in accordance with Judge Capel’s Order of September 13, 2007.

7) Although said attorneys Weatherford, Lee and Conaway have successfully defended and obtained dismissals of all claims against their clients in State Court and obtained affirmances on appeal, that conduct cannot, under any set of facts, violate a Federal Constitutional Right owed to the Plaintiff. Likewise, all claims against Lexa E. Dowling and Jere C. Segrest in their representative capacities have been dismissed in State Court and their conduct as such representatives cannot be deemed to violate a Federal Constitutional Right owed to the Plaintiff.

8) Even if Plaintiff could somehow establish the violation of a federally protected right that could form the basis of a 1983 case, these Defendants are not state actors. Therefore, Plaintiff cannot possibly establish the elements of a successful 1983 case. *See Marshall County Board of Education v. Marshall*, 992 F.2d 1171, 1174-1175 (11th Cir. 1994).

9) In addition to Plaintiff’s Complaint, as amended, being legally deficient and totally without factual merit, the dates set forth in Plaintiff’s Complaint, as amended, affirmatively show that the statute of limitations for asserting said claims against these Defendants had expired prior to the filing of Plaintiff’s initial Complaint and therefore Plaintiff is barred as a matter of law from asserting these claims.

10) The claims against these Defendants, if any, as set forth in Plaintiff's Complaint, as amended, are barred by the doctrine of res judicata, collateral estoppel and the *Rooker-Feldman* doctrine.

11) Said Defendants reserve the right to seek sanctions against the Plaintiff and reimbursement for attorneys' fees and costs pursuant to Rule 11 of the FRCP.

WHEREFORE, based upon the foregoing, said Defendants request and pray that this Court grant their Motion To Dismiss. Defendants pray for such other, different and further relief as the Court deems appropriate and reasonable under the circumstances.

Respectfully submitted,

RAMSEY, BAXLEY & McDOUGLE

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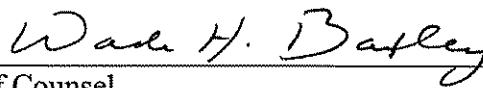
CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification via e-mail of such filing to the following:

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and I further certify that I have this day served a copy of the foregoing pleading upon the persons listed below by hand-delivery or by placing the same in the United States Mail with adequate postage affixed thereto and addressed properly:

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